

**THE STATE ELECTRICITY OMBUDSMAN**

D.H. Road & Foreshore Road Junction, Near Gandhi Square,  
Ernakulam, Kerala-682 016

Ph: 0484 2346488, Mob: 8714356488

[www.keralaeo.org](http://www.keralaeo.org) Email: [ombudsman.electricity@gmail.com](mailto:ombudsman.electricity@gmail.com)

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**Appeal Petition No. P/036/2024  
(Present A. Chandrakumaran Nair)  
Dated: 07-08-2024**

Appellant : Sri. Gopakumar.R  
Printers Hub, 41/3957A  
Hyas Arcade, Old Railway Station Road  
Ernakulam (Dist.)- 682018

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
Kerala State Electricity Board Ltd.,  
Central, Ernakulam Dist.,

**ORDER**

**Background of the case**

The appellant Shri. Gopakumar.R is a consumer of the Licensee (KSEBL) under the Electrical section, Ernakulam Central. The connected load in 73 Kw with contract demand 67 KVA and the power was connected on 08/12/2017 under the tariff LT IV A Industrial. The AEE, of Electrical subdivision, Ernakulam Central had conducted a surprise inspection on 14/07/2024. The CT connected for this 3 phase supply was of 200/5 ratio and hence the multiplication factor to be 40. The Licensee was billing the consumer since the date of connection with the multiplication factor as 20 instead of 40. A short assessment bill for Rs. 15,38,792/- has been prepared and issued for a period from 08/12/2017 to 14/02/2024. Which is for more than 5 years. The appellant objected the short assessment bill prepared for 5 years and filed the petition to CGRF. CGRF issued the order dated 15/05/2024 on completing the procedures which states that the appellant is liable to pay the short assessment bill. Aggrieved with the decision of the CGRF this appeal petition is filed to this Authority.

## **Arguments of the Appellant**

Ours is an industry having LT IV A tariff. On 20.02.2024 we received a short assessment bill for Rs.15,38,792/-, due to wrong MF from 08.12.2017 to 31.01.2024. We have submitted an objection against the Short Assessment bill with AE and AEE, but they also rejected our objection. After that we have approached CGRF with the following objections:

As per Supply Code Reg.152, Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act. As per Supply Code Reg.152 'Anomalies attributable to the licensee which are detected at the premises of the consumer' (3) (Para.4) says 'Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months". In our case KSEBL have calculated recoverable arrear from 08.12.2017 to 31.01.2024, six years. It should be revised, for two years.

As per Supply Code 2014, Reg.136 (2) 'No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied'. KSEBL haven't shown the amount as arrear. Also please note that we have executed a ToD Supplementary agreement on 20.10.2022 for reduced contract demand 30kVA. During the execution of agreement, KSEBL haven't checked the CT and directed us to replace the CT. If the load is less for the 200/5A CT the CT and Meter recorded data may be not correct. Hence, we request you to check or CT and Meter in an NABL Accredited laboratory. KSEBL have to provide us with a parallel meter to check our consumption for the variation if any. If there is variation in average consumption, then only KSEBL can claim difference in multiplication factor even for two years.

More than that, as per the CEA Regulation 2006, 2(P) "meter" means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipment such as current Transformer (CT), Voltage Transformer (CVT) necessary for such purpose'. Here the CT ratio is not matching with the contract demand, hence there is a chance of wrong recording of consumption. Hence the proceedings for the meter faulty period can only be adapted while claiming the short assessment bill. While executing an agreement with a consumer it is the bound duty of the licensee to check both Meter and CT. The agreement is for 30kVA and full load

current will never be exceeded 40A, and we can even go for direct meter of 0-60A or CT Meter with 100/5A CT. Hence KSEBL claim of 200/5A CT is not correct and if it is so it is only KSEBL responsibility. As per CEA Regulation Amendment 2019, Reg.17 (2), Specification of Meter, the consumer up to 650V, CT connected should have Class 0.5S as per relevant IS where separate CTs are used. In this case, contract demand not matching with CT used, then the Energy Meter will not be accurate as per CEA Regulation and calculation as per the assumptions and portioning method is against the compliance of CEA regulation. The only solution is to take the average consumption as per Reg. 125 (1), 'In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective.

As per Reg. 116 (2), 'If the meter is found defective, the licensee may test it at site, if feasible, and if not feasible, the meter shall be replaced with a correct meter and the defective meter shall be got tested in an accredited laboratory or in an approved laboratory". Here KSEBL not changed the meter and CT when they found CT is not specified for the contract demand.

8. As per Reg.115 (9), 'In case the meter is found to be faulty, revision of bill on the basis of the test report shall be done for a maximum period of six months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in the two subsequent bills". But KSEBL have served the short assessment for 08.12.2017 to 31.01.2024, without justifying the calculation and details for faulty period, calculation method etc... KSEBL cannot claim the amount. Even though we have explained the technical details and KSEBL side mistake, CGRF didn't consider the same. CGRF heard KSEBL, and admitted the KSEBL version of limitation of the time period.

As per Supply Code Reg.152 'Anomalies attributable to the licensee which are detected at the premises of the consumer' (3) (Para.4) says 'Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months". Our MF error is due to KSEBL fault and not our concern, they can claim maximum year less collected amount.

Relief Sought

1. The Hon. Ombudsman may direct KSEBL not to disconnect our supply.
2. Hon. Ombudsman may cancel the CGRF Order NO. CGRF-CR/OP No.124/2023-24/120 dated 15.05.2024
3. The Hon. Ombudsman may cancel the impugned bill
4. The Hon. Ombudsman may Reduce the period of assessment to maximum 24 months
- 5.The Hon. Ombudsman may direct KSEBL to provide us the instalment facility without interest.

## **Visions of the respondent**

All the averments and allegations in the appeal which are not specifically admitted hereunder are denied. The demand raised is pertaining to the actual energy charges liable to be paid against the actual consumption of the consumer in the premises that escaped assessment due to wrong multiplication factor which amounts to Rs.1538792/-for a period to 14.02.2024. The demand raised against the consumer from 08.12.2017. 1155468026299 is valid in all aspects. The demand notice is accompanied by the calculation details of the assessment by which the undercharged amount has been arrived.

Electricity connection bearing consumer number 1155468026299 under the jurisdiction of the Electrical Section, Ernakulam Central has been given to Sri. GOPAKUMAR R under LT IVA industrial tariff with a sanctioned load of 73000 watts. And with contract demand of 67KVA. The date of electricity connection given was 08.12.2017. The Assistant Executive Engineer, Electrical Sub Division, Central, Ernakulam along with the officials of Electrical Section, Central conducted a surprise inspection in the premises on 14.02.2024 and site mahazar was prepared by the Assistant Engineer Sri.Sunil N V. The site Mahassar is produced herewith as Exhibit R1 Pursuant to the site inspection, a short assessment of Rs.1538792/- was issued on 20.02.2024 under Regulation 152 of Kerala Electricity Supply code 2014 produced herewith as Exhibit R2. The petitioner has filed an objection against the short assessment order on 02.03.2024 before the Assistant Executive Engineer. A hearing was conducted on 12.03.2024 at Electrical Sub Division, Central, Ernakulam. Sri. Gopakumar R and Sreeraj E R attended for hearing on 12.03.2024.

From the date of connecton onwards (08.12.2017 )the consumer was billed with a multiplication factor of 20 instead of 40 since the multiplication factor wrongly entered in Orumanet software as 20. The undersigned has inspected and verified the test reports of the CT produced herewith as Exhibit R4 and Meter submitted along with the application by the consumer for the service connection. And It is found that the current transformers(CT) are all with ratio 200/5, 0.5S class and El make. power The serial numbers mentioned in the test report are 26417, 26418, 26419 and 26420 which are the same as recorded in the site mahazar. So it is clear that the Current Transformers installed in the premises while giving service connection are of CT ratio 200/5. Hence the correct ratio to be used for bill calculation is 40 instead of 20 upon the site inspection it was found that the Current Transformer(CT) installed in the premises are 200/5A, 0.5S class, Elpower make and its serial number in R phase, Y phase, B phase and neutral are 26417, 26420, 26419 and 26418 respectively and hence the correct multiplication factor is 40. But the consumer was being billed using a multiplication factor of 20, As the consumer was not being billed for his actual consumption due to this wrong Multiplication factor, the consumer

was given a short assessment bill under Regulation 134 (1) of Electricity Supply Code 2014 for the under charged portion of the consumption amounting to 08.12.2017. to Rs.1538792/-for a period from 14.02.2024.

A ToD supplementary agreement was executed on 20.10.2022 for reduced contract demand 30KVA with KSEBL without change in connected load. So the anomaly in CT ratio was not detected. As per the test reports submitted along with the service connection application, all the CTs are 0.5S class and hence there is no question in the accuracy of the CT and reading in the meter. Only the multiplication factor in the Orumanet billing software was wrongly entered as 20 instead of 40. Also petitioner stated that as per CEA regulation Amendment 2019 Reg 17(2) specification of meter the consumer up to 650V, CT connected should have Class 0.5S as per relevant IS where separate CTs are used.

It is respectfully submitted that the party has approached to Hon. CGRF vide OP No124/2023-24. The complainant preferred this appeal against the order in Complaint No.124/23-24. After examining the contentions advanced by the parties in Complaint No.124/23-24.the consumer grievance redressal forum has arrived at its conclusion in a perfectly legal manner upholding the contentions of the board. The Consumer Grievance Redressal Forum ordered that the petitioner is liable to pay this short assessment bill and is produced herewith as exhibit R5. Regulation 134 (1) of Electricity Supply Code 2014 says about Under charged bills and over charged bills.- 134(1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

As a distribution licensee, KSEBL has the right to claim such 'escape assessment' as per Regulation 134(1) Kerala Electricity Supply Code 2014, The legal right of the distribution licensee has categorically emphasized by the Hon'ble Supreme Court of India in its judgment in Civil Appeal No.7235 of 2009. Case: M/s. Prem Cottex V. Uttar Haryans Bijli Nigam Ltd. &others. The Hon'ble Kerala Electricity Regulatory Commission in a similar case(M/s.Ben- net Coleman and Co. Ltd.) wrong application of tariff for a period of 66months, KSERC order dated 15.11.2021 in RP No.3/2021 has ordered to pay the amount as per demand for the entire period with applicable interest. KSERC in RP.3/21 BCCL vs KSEB held that restriction of 2 years imposed under Section 56(2) of the Electricity Act 2003, does not preclude

The short assessment bill is not barred by Limitation Act, 1963'. Section 17(1)© of Limitation Act 1963 "says that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence have discovered it. Regulation 136 of Kerala Electricity Supply Code 2014, says

that Licensee has the right to recover the arrears of charges or any other amount due from the consumer along with interest at rate applicable for belated payments from the date on which such payment is due. The licensee is entitled to recover the undercharged amounts for the entire period during which such anomaly persisted. The act and law do not permit the consumer to make an unlawful gain without paying for the energy consumed. The consumer is liable to pay the respective charges applicable under the tariff against the energy that is consumed. As per Section 45 of the Electricity Act 2003 the Licensee is entitled to recover charges for the energy supplied.

Regulation 136 of of Electricity Supply Code 2014 states that " Recovery of arrears and its limitation.- (1) The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due." (2) The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice. (3) No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied. (4) If the consumer fails to remit the amount of arrears with interest on or before the due date indicated in the bill or in the demand notice, the licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions.

It is respectfully submitted that the licensee is entitled to recover the undercharged amounts for the entire period during which such anomaly persisted. The act and law do not permit the consumer to make an unlawful gain without paying for the energy consumed. The consumer is liable to pay the respective charges applicable under the tariff against the energy that is consumed. Section 45 of the Electricity Act deals with the power of the licensee to recover charges for the energy supplied. As per regulation 134 (1) of Kerala Electricity Supply Code 2014, if the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill. Also, Regulation 136 of Kerala Electricity Supply Code 2014, Licensee has the right to recover the arrears of charges or any other amount due from the consumer along with interest at rate applicable for belated payments from the date on which such payment is due.

The legal right of the distribution licensee has categorically been emphasized by the Hon'ble Supreme Court of India in its judgment in Civil Appeal No.7235 of 2009, M/s. Prem Cottex V. Uttar Haryans Bijli Nigam Ltd. & others. Regulation 134(1) reads under charged bills-1, If the licensee

establishes either by review or otherwise that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least, thirty days shall be given to the consumer for making payment of the bill. The period of the short assessment bill is not barred by 'Limitation Act, 1963'. Section 17(1)(c) of Limitation Act 1963 "says that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence have discovered it." The error in multiplication factor was detected in the inspection on 14.02.2024.

The licensee is entitled to recover the undercharged amounts for the entire period during which such anomaly persisted. The act and law do not permit the consumer to make the an unlawful gain without paying for the energy consumed. The consumer is liable to pay respective charges applicable under the tariff against the energy that is consumed. As per Section 45 of the Electricity Act 2003 the Licensee is entitled to recover charges for the energy supplied. The licensee is therefore entitled to collect the amount that has escaped assessment as the inspection has been conducted within the statutory frame. The licensee is bound to abide by the statutes and is bound to recover the unbilled portion of the consumption and the same amounts to public money. The petitioner is capable of paying the amounts demanded and is having sufficient means to satisfy the same. Considering the above facts, I may request this Honourable forum to accept the contentions raised through this statement of facts and dismiss the above complaint with cost to the respondents and Declare that the short assessment bill issued is in order and to direct the consumer to pay the short assessment amount with interest.

## **Counter Arguments of the Appellant**

Ours is an industry having LT IV A tariff. On 20.02.2024 we received a short assessment bill for Rs.15,38,792/-, due to wrong MF from 08.12.2017 to 31.01.2024. We have submitted an objection against the Short Assessment bill with AE and AEE, but they also rejected our objection. After that we have approached CGRF and they also issue order in favour of KSEBL. Hence, we approached Electricity Ombudsman. On 26.06.2024. we have received KSEBL statement of facts. We also objecting the statement of KSEBL is as follows: -

In the statement of facts, point 2, KSEBL used word "escaped assessment", please not that its KSEBL duty to check multiplication factor and collect actual consumption charges from consumers on time. In the statement of facts, point 4, KSEBL says that the multiplication factor entered in orumanet software was 20 instead of 40. The electricity connection issued by KSEBL after verification of Meter and CT test report, only. Its their duty to verify the software and billing accuracy. In the statement of facts, point 5,

KSEBL says that they have identified the CT ratio during the inspection on 2024. As per Supply Code Reg. 113 (6), The licensee shall conduct periodical inspection or testing or both of the meters as per the following schedule, 3Phase LT connection - once in every three years. Which means after installation of meter and CT in a consumer premise, it is the duty of the KSEBL to check the system, after three years. Our connection was energised on 08.12.2017, hence KSEBL have to recheck the connection during December 2020, but they haven't done the same. If they have done their duty on time the error from KSEBL side can be solved during 2020.

In the statement of facts, point 6, KSEBL agreed that we have executed the supplementary agreement on 20.10.2022 and reduced contract demand 30kVA without change in connected load. They also rechecked the CT test report that time and confirmed that the specification of CT is correct. Whenever we reduced the contract demand the CT also have to be checked and its accuracy have to verify. But KSEBL never checked the details and bills during execution of the agreement. In the statement of facts, point 8, KSEBL says that as per Reg.134 (1), licence may recover the amount so undercharges from the consumer. But As per Supply Code 2014, Reg.136 (2) 'No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied'. Hence KSEBL cannot claim the undercharged amount for more than two years.

In the statement of facts, point 9, KSEBL referred Supreme Court Order, related to multiplication factor. The error found by the licence within three years of supply. As per our Regulation, its KSEBL duty to check the connection within three years, but they failed to do the same and now blaming consumers. Which is fair and just. We request Hon. Ombudsman may consider Supply Code Reg.152 'Anomalies attributable to the licensee which are detected at the premises of the consumer' (3) (Para.4) says 'Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months'. Our MF error is due to KSEBL fault and not our concern, they can claim maximum two year only.

## **Analysis and Findings**

Hearing of this petition was conducted on 30/07/2024 at 11 am at Electricity Ombudsman Office, D.H. Road & Foreshore Road Junction, Near Gandhi Square, Ernakulam. The hearing is attended by the Appellant Sri.Gopakumar.R, Printers Hub, 41/3957 A, Hyat Arcade, Old Railway Station Road, Ernkulam Dist., and Mrs. Neenu Skaria, Chartered Engineer, Industrial Electricity Consumers Consortium, Manakkat Building 21/67-A, University Road, Kochi University P.O, Kochi and the respondents



Bajumon .P, The Assistant Executive Engineer, Electric Sub Division, KSE Board Limited, Central, Ernakulam, Tito.V.William, Nodel Officer, Ernakulam.

The appellant is the owner of a printing press named on the “Printers hub” situated at old railway station Road, Ernakulam. The 3 phase power supply was availed on 08/12/2017. The connected load was 73W with contract demand 67 KVA. The contract demand has been reduced to 30 KVA as per the supplementary agreement executed on 20/10/2022. The metering arrangement is through a C.T connected metering and the CT ratio is 200/5. The multiplication factor of the metering system is 40. The licensee was billing the appellant by calculating the consumption considering the multiplication factor as 20 instead of 40. This mistake of the licensee has been found out during the inspection conducted by AEE on 14/02/2024. The site mahazzar was prepared during the inspection in presence of the representative of the appellant and with his signature.

The short assessment for Rs: 15,38,792/- have been prepared and issued to the appellant. Then the amount was finalised after the hearing conducted by the AEE. The regulation 134(1) of the supply code states about raising of the bills on under charged consumers:

*134. “Under charged bills and over charged bills:- (1). If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.”*

*Then the regulation 136 (1) & (3) tells about the recovery of arrears and its limitation*

*136(1)“Recovery arrears and its limitation:- 1) The Licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due.”*

*136(3) “No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.”*

The regulation 152 is seen to be more appropriate in this case which describes about the anomalies attributable to the licensee which are detected at the premises of the consumer.

*152(1) “Anomalies attributable to the licensee which are detected at the premises of the consumer:- Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of*

*electricity by the consumer and inaccuracies in metering shall not attract provisions section 126 of the Act or of Section 135 of the Act.”*

*(2)“In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.”*

*(3)“ The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest.”*

*“Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to 12 months.”*

*“Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered”*

*“Provided also that realization of electricity charges short collected shall be limited for a maximum period of 24 months, even if the period during which such anomaly persisted found to be more than 24 months”.*

The regulation 136(3) as well as 152(3) are telling about the limitation of 2 years for charging the arrears. Then it is very pertinent to refer the decision of Hon'ble Supreme Court in the petition Civil appeal No:3235/2009 between M/S. prem Cottex Vs Uttara Hariyana Bijili Nigam Ltd & others. This is a similar case where the arrears bills was raised due to wrong calculation of multiplication factor.

*Para 9. Before we proceed to consider the statutory provision and the decision of this Court relied upon by the appellant, it is relevant to take note of the fact that the appellant never disputed the correctness of the claim of the respondents that the multiply factor (MF) to be applied was 10, but it was wrongly applied as 5. The only grievance raised by the appellant both in their representation and in their consumer complaint was that they cannot be made to suffer on account of the negligence on the part of the respondents and that on the basis of the bill already raised, they have charged their customers and that it may not be possible for them to go back to their customers with an additional demand now. In addition, the bar under Section 56 was also pleaded.*

*Para 10. Section 56 of the Electricity Act, 2003 reads as under:-*

*"56. Disconnection of supply in default of payment. (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling*

*of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

*Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -*

*(a) an amount equal to the sum claimed from him, or*

*(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,*

*whichever is less, pending disposal of any dispute between him and the licensee.*

*(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*

*Para 11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.*

*Para 12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh.*

*Para 13. Despite holding that electricity charges would become first due*

*only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).*

*Para 16. Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under sub-section (2) of section 56 of the Act".*

This order states that the amount is first due only when the mistake have been detected and the limitation of two years commence from the date of detection of the mistake. The regulation 152(3) states that the realization of arrears/ short assessment is to be limited to 24 months even if the period in which the anomaly persisted is found to be more than 24 months. The main question arises in this is which will be applied in the case in hand. Whether 152(3) or order of Hon'ble Supreme Court.

The article 141 of the constitution of India, the judgement of the Apex Court is the law of the land which states "Law declared by Supreme Court to be binding on all Courts within the territory of India". More over the case referd above is also about the wrong billing due to incorrect multiplication factor that means the case is same as that of the case under consideration. Then the Hon'ble Supreme Court order Supercedes the regulation 152(3). The period of the short assessment bill is not bared by limitation Act 1963."The section 17(1)( c) of limitation Act 1963 says that "in the case of suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence have discovered it." Here the error in the multiplication factor was detected during the inspection conducted on 14/02/2024 and the limitation of two years starts from that date onwards.

It is also very relevant to consider the order of Hon'ble KSERC in RP/03/2021 in the case between M/s. Bennet Coleman & Co.Ltd. Vs KSEBL where the arrear bill was raised for a period of 66 months due to wrong application of tariff.When the original petition was heard by the Hon'ble Commission the short assessment was limited to 24 months as per the

regulation 152(3). Then on the review petition filed by the KSEBL, the order has been reviewed considering the decision of Hon'ble Supreme Court in the civil appeal No: 7235/2009. The decision was that the consumer is liable to pay the short assessment for the entire period of 66 months.

The period of short assessment is from 08/12/2017 to 14/02/2024, which is for around 74 months. There it seems so many lapses from the licensee. There was different situation were there to detect this mistake. The regulation 113 of the supply code 2014 states that the LT 3 phase meter would have been inspected or tested in very three years. When ever this inspection would have conducted, then the mistake would have detected either in 2020 or 2023. This inspection was carried out only on 14/02/2024. The appellant has submitted an application to reduce the contract demand from 67 KvA to 30 KvA and the supplementary agreement has been executed on 20/10/2022. The regulation 100 of the supply code 2014 deals with reduction of connected load or contract demand, 100(3) mandated for a site inspection before sanctioning the reduction of contract demand. Hence the Licensee has not been complied with the regulation. These regulation has been introduced mainly to assest this type of revenue leakage of the Licensee and thus the liability of the public. The officials responsible for this lapses are to be find out and actions are to be taken by the Licensee. Here the consumer has to bear the immediate impact of a heavy payment due to this lapses and not due to any mistake from him. The consumer who is supposed to pay by 74 months are asked to pay in one shot will be a heavy burden on to them and will affect the existence. Then the considerable instalment facility is to be granted for them to survive in the industry. Though as per the Order of the Apex Court, the consumer is liable to pay the arrears, this type heavy payment in one time is not justifiable.

## **Decision**

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the short assessment arrear bill issued by the Licensee.
2. The Licensee shall grant 70 monthly installments to remit the payment.
3. The Licensee shall not change any interest/ surcharge on this payment
4. The Licensee shall find out the officials responsible for this lapse and action shall be taken.
5. No other costs ordered.

**ELECTRICITY OMBUDSMAN**

No. P/036/2024/ \_\_\_\_\_ dated: \_\_\_\_\_

Delivered to:

1. Sri. Gopakumar.R, Printers Hub,41/3957 A, Hyas Arcade, Old Railway station Road, Ernakulam Dist., Pin-682018
2. The Assistant Executive Engineer, Electrical Sub Division, Kerala State Electricity Board Ltd., Ernakulam (Dist.)

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, 220 kV Substation Compound,HMT Colony P.O. Kalamassery Ernakulam Pin- 683503